

David J. McGlothlin, Esq. (SBN 026059)  
david@southwestlitigation.com

**Hyde & Swigart**

2633 E. Indian School Road, Ste. 460  
Phoenix, AZ 85016  
Telephone: (602) 265-3332  
Facsimile: (602) 230-4482

Ryan L. McBride, Esq. (SBN 032001)  
ryan@kazlg.com

**Kazerouni Law Group, APC**

2633 E. Indian School Road, Ste. 460  
Phoenix, AZ 85016  
Telephone: (800) 400-6808  
Facsimile: (800) 520-5523

*Attorneys for Plaintiff*

**UNITED STATES DISTRICT COURT  
DISTRICT OF ARIZONA**

**Daniel Robert Osborn,**

Plaintiff,

v.

**Experian Information Solutions,  
Inc.; North American Recovery;  
and Wells Fargo Bank, National  
Association,**

Defendants.

**Case No.:**

**COMPLAINT FOR DAMAGES  
PURSUANT TO THE FAIR CREDIT  
REPORTING ACT, 15 U.S.C. § 1681,  
ET SEQ.**

**JURY TRIAL DEMANDED**

**INTRODUCTION**

1. The United States Congress has found the banking system is dependent upon fair and accurate credit reporting. Inaccurate credit reports directly impair the efficiency of the banking system, and unfair credit reporting methods undermine the public confidence, which is essential to the continued

1 functioning of the banking system. Congress enacted the Fair Credit  
2 Reporting Act, 15 U.S.C. § 1681 *et seq.* (“FCRA”), to insure fair and  
3 accurate reporting, promote efficiency in the banking system, and protect  
4 consumer privacy. The FCRA seeks to ensure consumer reporting agencies  
5 exercise their grave responsibilities with fairness, impartiality, and a respect  
6 for the consumer’s right to privacy because consumer reporting agencies  
7 have assumed such a vital role in assembling and evaluating consumer credit  
8 and other information on consumers. The FCRA also imposes duties on the  
9 sources that provide credit information to credit reporting agencies, called  
10 “furnishers.”

- 11 2. DANIEL ROBERT OSBORN (“Plaintiff”), by Plaintiff’s attorneys, brings  
12 this action to challenge the actions of EXPERIAN INFORMATION  
13 SOLUTIONS, INC. (“Experian”), NORTH AMERICAN RECOVERY  
14 (“NAR”), and WELLS FARGO BANK, N.A. (“Wells Fargo”) (or jointly as  
15 “Defendants”) with regard to erroneous reports of derogatory and negative  
16 credit information made by Defendants to national reporting agencies, and  
17 for failure of Defendants to properly investigate, and this conduct caused  
18 Plaintiff damages.
- 19 3. Plaintiff makes these allegations on information and belief, with the  
20 exception of those allegations that pertain to Plaintiff, or to Plaintiff’s  
21 counsel, which Plaintiff alleges on personal knowledge.
- 22 4. While many violations are described below with specificity, this Complaint  
23 alleges violations of the statute cited in its entirety.
- 24 5. Unless otherwise stated, all the conduct engaged in by Defendants took  
25 place in Arizona.
- 26 6. Any violations by Defendants were knowing, willful, and intentional, and  
27 Defendant did not maintain procedures reasonably adapted to avoid any such  
28 violation.
7. Unless otherwise indicated, the use of Defendants’ name in this Complaint

1 includes all agents, employees, officers, members, directors, heirs,  
2 successors, assigns, principals, trustees, sureties, subrogees, representatives,  
3 and insurers of Defendants' named.

#### 4 JURISDICTION AND VENUE

- 5
- 6 8. This Court has federal question jurisdiction because this case arises out of  
7 violation of federal law. 15 U.S.C. §1681 *et seq.*; 28 U.S.C. §1331;  
8 Jurisdiction arises for Plaintiff's supplemental state claims under 28 U.S.C.  
9 § 1367.
- 10 9. This action arises out of Defendants' violations of the Fair Credit Reporting  
11 Act, 15 U.S.C. §§ 1681-1681(x) ("FCRA").
- 12 10. Venue is proper in the United States District Court for the District of  
13 Arizona pursuant to 28 U.S.C. § 1391(b) because Plaintiff is a resident of  
14 Maricopa County, the State of Arizona and Defendants are subject to  
15 personal jurisdiction in the County of Maricopa, State of Arizona as they  
16 conduct business there, and the conduct giving rise to this action occurred in  
17 Arizona. 28 U.S.C. § 1391(b)(2).

#### 18 PARTIES

- 19 11. Plaintiff is a natural person residing in the County of Maricopa, State of  
20 Arizona. In addition, Plaintiff is a "consumer" as that term is defined by 15  
21 U.S.C. § 1681a(c).
- 22 12. Defendant Experian is a corporation doing business in the State of Arizona.
- 23 13. Defendant NAR is a debt collection agency doing business in the State of  
24 Arizona.
- 25 14. Defendant Wells Fargo is a bank doing business in the State of Arizona.
- 26 15. Defendants AFCU and DSFCU are furnishers of information as  
27 contemplated by 15 U.S.C. § 1681s-2(b) that regularly and in the ordinary  
28 course of business furnish information to a consumer credit reporting  
agency.

1 16. Defendant Experian is a national credit reporting agency, doing business in  
2 Arizona, with a principal place of business in Ohio.

3 **GENERAL ALLEGATIONS**  
4

5 17. At all times relevant, Plaintiff was an individual residing within the State of  
6 Arizona.

7 18. At all times relevant, Defendants conducted business in the State of Arizona.

8 19. On or about June 13, 2011, Plaintiff filed for a Chapter 13 Bankruptcy in the  
9 United States Bankruptcy Court for the District of Arizona in order to obtain  
10 a fresh start and rebuild his credit. Plaintiff's case was assigned Case  
11 Number 2:11-bk-17044-MCW (the "Bankruptcy").

12 20. The obligations ("Debt") to each defendant were scheduled in the  
13 Bankruptcy and Defendants, the Creditors, received notice of the  
14 Bankruptcy.

15 21. On or about August 8, 2014, Plaintiff received a Bankruptcy discharge.

16 22. None of the Defendants filed any proceedings to declare their Debt "non  
17 dischargeable" pursuant to 11 U.S.C. § 523 *et seq.*

18 23. Defendants also did not request relief from the "automatic stay" codified at  
19 11 U.S.C. §362 *et seq.* while the Plaintiff's Bankruptcy was pending to  
20 pursue the Plaintiff on any *personal* liability for any of the underlying Debts.

21 24. Accordingly, the Debt to each defendant was discharged through the  
22 Bankruptcy.

23 25. Further, while the automatic stay was in effect during the Bankruptcy, it was  
24 illegal for any of the Defendants to report any post-Bankruptcy derogatory  
25 collection information.

26 26. Defendants' attempt to collect upon their respective Debt by reporting post-  
27 Bankruptcy derogatory information was therefore false or inaccurate and  
28 prohibited by the automatic stay or Discharge.

1 27. Plaintiff subsequently learned that each of the named Defendants reported  
2 post-Bankruptcy derogatory credit information regarding the obligations on  
3 Plaintiff's credit reports, thereby causing erroneous, inaccurate, and negative  
4 credit information in Plaintiff's credit files.

5 28. The continued reporting of erroneous, inaccurate, and derogatory  
6 information negatively impacted Plaintiff's credit and his "fresh start".

7 **NAR Misreported Credit Information**

8 29. In an Experian credit report dated August 11, 2015, NAR reported the  
9 following inaccurate, derogatory information:

- 10 • Account No. 86781201480451: Post-bankruptcy information  
11 for the following dates: August 2011 (Collection).  
12

13 30. NAR should not have reported derogatory information on Plaintiff's  
14 account after June 13, 2011, because Plaintiff filed for Bankruptcy on June  
15 13, 2011.

16 31. On or about September 3, 2015, Plaintiff disputed NAR's reported  
17 information regarding the Debt pursuant to 15 U.S.C. § 1681I(a)(2) by  
18 notifying Experian, in writing, of the incorrect and inaccurate credit  
19 information furnished by NAR.

20 32. Specifically, Plaintiff sent a letter, certified, return receipt, to Experian (the  
21 "Experian Dispute Letter"), requesting the above inaccurate and incorrect  
22 derogatory information be removed as follows:

- 23 • Account #86781201480451: This account was discharged in  
24 my Bankruptcy which was filed on 06/13/2011 and discharged  
25 08/04/2014, bearing Case No. 2:11-bk-17044-MCW in the  
26 District for Arizona. There should be no derogatory reporting  
27 after the filing date. Specifically, please remove the derogatory  
28

1 information for the following post-bankruptcy dates: August  
2 2011 (Collection).

3  
4 33. The Experian Dispute Letter further requested that Experian:

- 5 • Immediately delete this account and the disputed derogatory  
6 information from my credit report.
- 7 • The discharged debt should be reported with an account balance  
8 of \$0 with a status of “current”.
- 9 • Further, there should be no post-bankruptcy activity reported on  
10 this account. The date of last activity on this account should pre-  
11 date my bankruptcy filing date, 06/13/2011, since a default on this  
12 account occurred no later than the Bankruptcy filing date.
- 13 • Any post-bankruptcy derogatory information should be  
14 immediately deleted from [Plaintiff’s] report.
- 15 • If [Experian] do[es] not immediately delete this from  
16 [Plaintiff’s] credit report, please include a 100-word statement in  
17 my credit report of all of the disputed information contained in this  
18 letter regarding this account.

19  
20 34. Upon information and belief, Experian timely notified NAR of Plaintiff’s  
21 dispute, but NAR continued reporting derogatory information.

22 35. NAR and Experian were required to conduct a reinvestigation into this  
23 specific account on Plaintiff’s consumer report pursuant to 15 U.S.C.  
24 §1681i.

25 36. On or about October 6, 2015, Plaintiff received notification from Experian  
26 that NAR and Experian received notice of Plaintiff’s dispute pursuant to 15  
27 U.S.C. § 1681i(a)(6), and Defendants verified the account had been updated.  
28

1 37. Surprisingly, rather than remove all the derogatory information from  
2 Plaintiff's report, NAR and Experian simply left derogatory information on  
3 Plaintiff's report. Specifically, NAR and Experian reported the following  
4 inaccurate, derogatory information:

- 5 • Account #86781201480451: Post-bankruptcy information for  
6 the following dates: August 2011 (Collections).  
7

8 38. NAR and Experian, upon receipt of Plaintiff's dispute, failed to conduct an  
9 investigation with respect to the disputed information as required by 15  
10 U.S.C. § 1681s-2(b)(1)(A).

11 39. NAR and Experian failed to review all relevant information provided by  
12 Plaintiff in the dispute to Experian, as required by and in violation of 15  
13 U.S.C. § 1681s-2(b)(1)(B).

14 40. Due to NAR and Experian's failure to investigate, they each further failed to  
15 correct and update Plaintiff's information as required by 15 U.S.C. § 1681s-  
16 2(b)(1)(E), thereby causing continued reporting of inaccurate information in  
17 violation of 15 U.S.C. § 1681-s(2)(b)(1)(C).

18 41. Plaintiff's continued efforts to correct NAR and Experian's erroneous and  
19 negative reporting of the Debt by communicating Plaintiff's dispute with  
20 NAR and Experian were fruitless.

21 42. NAR and Experian's continued inaccurate and negative reporting of the  
22 Debt in light of its knowledge of the actual error was willful.

23 43. NAR and Experian's inaccurate and negative reporting damaged Plaintiff's  
24 creditworthiness.

25 44. By inaccurately reporting account information relating to the Debt after  
26 notice and confirmation of its errors, NAR and Experian failed to take the  
27 appropriate measures as determined in 15 U.S.C. §§ 1681-s(2)(b)(1)(D) and  
28 (E).

**Wells Fargo Misreported Credit Information**

45. In an Experian credit report dated August 11, 2015, Wells Fargo reported the following inaccurate, derogatory information:

- Account No. 5023158132743.....: Post-bankruptcy information for the following dates: July 2011 (Account 90 Days Past Due); August 2011 (Voluntarily Surrendered); September 2011 (Charge Off).

46. Wells Fargo should not have reported derogatory information on Plaintiff's account after June 13, 2011, because Plaintiff filed for Bankruptcy on June 13, 2011.

47. On or about September 3, 2015, Plaintiff disputed Wells Fargo's reported information regarding the Debt pursuant to 15 U.S.C. § 1681I(a)(2) by notifying Experian, in writing, of the incorrect and inaccurate credit information furnished by Wells Fargo.

48. Specifically, Plaintiff sent a letter, certified, return receipt, to Experian (the "Experian Dispute Letter"), requesting the above inaccurate and incorrect derogatory information be removed as follows:

- This account was discharged in my Bankruptcy which was filed on 06/13/2011 and discharged 08/04/2014, bearing Case No. 2:11-bk-17044-MCW in the District for Arizona. There should be no derogatory reporting after the filing date. Specifically, please remove the derogatory information for the following post-bankruptcy dates: July 2011 (Account 90 Days Past Due); August 2011-September 2011 (Charge Off).



1 49. The Experian Dispute Letter further requested that Experian:

- 2
- 3 • Immediately delete this account and the disputed derogatory
- 4 information from [Plaintiff's] credit report.
- 5 • The discharged debt should be reported with an account balance
- 6 of \$0 with a status of "current".
- 7 • Further, there should be no post-bankruptcy activity reported on
- 8 this account. The date of last activity on this account should pre-
- 9 date my bankruptcy filing date, 06/23/2011, since a default on this
- 10 account occurred no later than the Bankruptcy filing date.
- 11 • Any post-bankruptcy derogatory information should be
- 12 immediately deleted from [Plaintiff's] report.
- 13 • If [Experian] do[es] not immediately delete this from
- 14 [Plaintiff's] credit report, please include a 100-word statement in
- 15 my credit report of all of the disputed information contained in this
- 16 letter regarding this account.

17 50. Upon information and belief, Experian timely notified Wells Fargo of  
18 Plaintiff's dispute, but Wells Fargo continued reporting derogatory  
19 information.

20 51. Wells Fargo and Experian were required to conduct a reinvestigation into  
21 this specific account on Plaintiff's consumer report pursuant to 15 U.S.C.  
22 §1681i.

23 52. On or about October 6, 2015, Plaintiff received notification from Experian  
24 that Wells Fargo and Experian received notice of Plaintiff's dispute pursuant  
25 to 15 U.S.C. § 1681i(a)(6), and verified the account had been "updated.

26 53. Surprisingly, rather than remove all the derogatory information from  
27 Plaintiff's report, Wells Fargo and Experian simply left derogatory  
28

1 information on Plaintiff's report. Specifically, Wells Fargo and Experian  
2 reported the following inaccurate, derogatory information:

- 3 • Account No. 5023158132743.....: Post-bankruptcy information  
4 for the following dates: July 2011 (Account 90 Days Past  
5 Due); August 2011 (Voluntarily Surrendered); September 2011  
6 (Charge Off).  
7

8 54. Wells Fargo and Experian, upon receipt of Plaintiff's dispute, failed to  
9 conduct an investigation with respect to the disputed information as required  
10 by 15 U.S.C. § 1681s-2(b)(1)(A).

11 55. Wells Fargo and Experian failed to review all relevant information provided  
12 by Plaintiff in the dispute to Experian, as required by and in violation of 15  
13 U.S.C. § 1681s-2(b)(1)(B).

14 56. Due to Wells Fargo and Experian's failure to investigate, they each further  
15 failed to correct and update Plaintiff's information as required by 15 U.S.C.  
16 § 1681s-2(b)(1)(E), thereby causing continued reporting of inaccurate  
17 information in violation of 15 U.S.C. § 1681-s(2)(b)(1)(C).

18 57. Plaintiff's continued efforts to correct Wells Fargo and Experian's erroneous  
19 and negative reporting of the Debt by communicating Plaintiff's dispute  
20 with Wells Fargo and Experian were fruitless.

21 58. Wells Fargo and Experian's continued inaccurate and negative reporting of  
22 the Debt in light of its knowledge of the actual error was willful.

23 59. Wells Fargo and Experian's inaccurate and negative reporting damaged  
24 Plaintiff's creditworthiness.

25 60. By inaccurately reporting account information relating to the Debt after  
26 notice and confirmation of its errors, Wells Fargo and Experian failed to take  
27 the appropriate measures as determined in 15 U.S.C. §§ 1681-s(2)(b)(1)(D)  
28 and (E).

**FIRST CAUSE OF ACTION**  
**VIOLATION OF THE FAIR CREDIT REPORTING ACT**  
**15 U.S.C. § 1681 *ET SEQ.* (FCRA)**

61. Plaintiff incorporates by reference all of the above paragraphs of this Complaint as though fully stated herein.

62. The foregoing acts and omissions constitute numerous and multiple willful, reckless or negligent violations of the FCRA, including but not limited to each and every one of the above-cited provisions of the FCRA, 15 U.S.C § 1681.

63. As a result of each and every willful violation of the FCRA, Plaintiff is entitled to actual damages as the Court may allow pursuant to 15 U.S.C. § 1681n(a)(1); statutory damages pursuant to 15 U.S.C. § 1681n(a)(1); punitive damages as the Court may allow pursuant to 15 U.S.C. § 1681n(a)(2); and reasonable attorney's fees and costs pursuant to 15 U.S.C. § 1681n(a)(3) from Defendants.

64. As a result of each and every negligent noncompliance of the FCRA, Plaintiff is entitled to actual damages as the Court may allow pursuant to 15 U.S.C. § 1681o(a)(1); and reasonable attorney's fees and costs pursuant to 15 U.S.C. § 1681o(a)(2) from Defendants.

**PRAYER FOR RELIEF**

Plaintiff respectfully requests the Court grant Plaintiff the following relief against Defendants:

///

///

///

**FIRST CAUSE OF ACTION**  
**VIOLATION OF THE FAIR CREDIT REPORTING ACT**  
**15 U.S.C. § 1681 ET SEQ. (FCRA)**

- an award of actual damages pursuant to 15 U.S.C. § 1681n(a)(1);
- award of statutory damages pursuant to 15 U.S.C. § 1681n(a)(1);
- an award of punitive damages as the Court may allow pursuant to 15 U.S.C. § 1681n(a)(2);
- award of costs of litigation and reasonable attorney's fees, pursuant to 15 U.S.C. § 1681n(a)(3), and 15 U.S.C. § 1681(o)(a)(1) against Defendants for each incident of negligent noncompliance of the FCRA; and
- any other relief the Court may deem just and proper.

**TRIAL BY JURY**

65. Pursuant to the seventh amendment to the Constitution of the United States of America, Plaintiff is entitled to, and demands, a trial by jury.

Dated: December 28, 2015

Respectfully submitted,

BY: /s/ RYAN L. MCBRIDE  
RYAN L. MCBRIDE, ESQ.  
ATTORNEY FOR PLAINTIFF